



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105

July 27, 1992

James Stout, Esq.
Chief Counsel, OCC
United States Department of Energy
Albuquerque Field Office
Post Office Box 5400
Albuquerque, New Mexico 87185-5400

Re: Bluewater Uranium Mining Sites
Prewitt, New Mexico

Dear Mr. Stout:

As you are aware, the United States Environmental Protection Agency has documented the release or threatened release of hazardous substances, pollutants or contaminants at the Bluewater Uranium Mining Sites. EPA has spent public funds to investigate and control these releases, pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), and Sections 300.410 and 300.415 of the National Contingency Plan (NCP).

As I indicated in my April 28, 1992 correspondence, EPA has reason to believe that the Department of Energy is a potentially responsible party (PRP) with regard to a portion of the Bluewater Uranium Mining Sites (specifically, the land which has been identified as "the south east quarter (SE 1/4) and the south half of the north half (S 1/2 N 1/2) of Section 13, Township 13 North, Range 11 West, New Mexico Principal Meridian, located in McKinley County, New Mexico"). Through previous communications, the Department has acknowledged that the land in question is under its "jurisdiction, custody or control," and that pursuant to Executive Order 12580, dated January 23, 1987, DOE is responsible for responding to the release or threatened release of hazardous substances on that parcel.

As we have previously stated, EPA also has reason to believe that the release and threatened release of hazardous substances from the uranium mine pit surfaces, mining overburden, and abandoned ore debris at the DOE Bluewater Site presents an imminent and substantial endangerment to public health, welfare and the environment. The extent of public endangerment which the Site poses was first identified by the Agency for Toxic Substances and

Disease Registry (ATSDR) in a Public Health Advisory issued in November 1990. Based on this Advisory and subsequent investigatory work performed by EPA Region 9, the Region concluded, well over one year ago, that a removal action must be conducted promptly at the Site in order to: (1) reduce surface emissions of gamma radiation, and (2) restrict public access to the Site.

It is EPA's understanding that in the course of the last year, the Department of Energy has encountered complex legal problems with regard to the cancellation of George Warnock's mining lease at the Site, and his threat to file "takings" litigation against DOE. Based on my discussions with Dean Arnold of your staff in late May, we understand that DOE is still attempting to resolve these legal problems. While it is unfortunate that the Department finds itself in a difficult legal situation, EPA has an ongoing responsibility to ensure that the necessary response action is undertaken in a reasonably prompt fashion at the Bluewater Site, in order to protect public health and welfare and the environment.

In my April correspondence, I urged the Department to take expeditious action to resolve the lease termination and "takings" claims, so that an appropriate response action could proceed in a timely fashion. It should be noted that since that time, Dean Arnold of your staff has been able to provide us with some useful background information on this matter, both in a telephone conversation and in his subsequent transmittal of relevant documents to Region 9. However, almost two months have now passed since our last communication with DOE. As the days pass, we are becoming increasingly concerned with the prospect of continued delay in the conduct of response activities at the Site.

Given the serious nature of the hazards which the Site continues to pose to public health, welfare and the environment, EPA believes that DOE must take action in the very near future to respond to the ongoing releases at the Site. If the Department cannot commit to take such action within the next 45 days, EPA Region 9 will have no recourse but to escalate this matter, including the possibility of issuing a formal notice of liability and obtaining necessary and appropriate support from the Environmental Enforcement Section within the Department of Justice.

EPA hopes to continue to work cooperatively with the Department of Energy to restore the Site, and thereby ensure the protection of public health and the environment. Please contact our office as soon as possible to provide us with an update on the status of the lease cancellation proceedings, and the timeframe for DOE's planned response activities at the Site.

Legal matters should be referred to me, at (415) 744-1359; and technical questions should be referred to Robert Bornstein, at (415) 744-2298. Thank you for your continued cooperation in this matter.

Sincerely,

Linda P. Wandres

Linda P. Wandres
Senior Attorney for Superfund
Counselling and Indian Law Matters

cc: Robert Bornstein, EPA
Robert Ivey, DOE
Dean Arnold, DOE
Sadie Hoskie, Navajo EPA
Diane Malone, Navajo Superfund Program